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Paper No. 8

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AUG 07 2002

OFFICE OF PETITIONS

In re Application of :
Lutnick, Kirwin, and Gilbert :
Application No. 10/015,738 : DECISION REFUSING STATUS
Filed: 12 December, 2001 : UNDER 37 CFR 1.47(a)
Attorney Docket No. CF-030 :
:

This is in response to the petition under 37 CFR 1.47(a), filed on 12 July, 2002.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on 12 December, 2001, without a signed oath or declaration. Accordingly, on 22 January, 2002, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring a signed oath or declaration and a surcharge for its late filing. In response, on 12 July, 2002, petitioners filed a four (4) month time extension, the late filing surcharge, a declaration naming Howard M. Lutnick, Glenn D. Kirwin, and Andrew C. Gilbert as joint inventors and signed by joint inventor Lutnick, and the legal representative of deceased joint inventor Glenn D. Kirwin.

Petitioners assert that joint inventor Gilbert is deceased and that a copy of the declaration was sent to his legal

representative.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor, or legal representative thereof, cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor, or legal representative thereof.

The present petition lacks items (1).

In regards to item (1), before a refusal to sign can be alleged, a copy of the application (specification, including claims, drawings, if any, and the declaration), must be sent or given to the legal representative of the deceased inventor. Petitioners may provide proof by supplying a copy of the cover letter transmitting the application papers to the non-signing inventor's legal representative or provide details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

If the legal representative refuses in writing to sign the declaration, petitioners should provide a copy of that written refusal with any renewed petition. If the refusal is made orally, then a person with first hand knowledge of the details of the refusal must provide details of the refusal in an affidavit or declaration of facts.

The Request to Rescind a Nonpublication Request filed on 10 May, 2002, is accepted. In view of the rescinding of the nonpublication request, a Notice of Publication Fee Due will be sent under separate cover. Petitioner should note that payment of the publication fee is required to be filed within the period set forth in the Notice to avoid abandonment of the application.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries concerning this matter may be directed to the
undersigned at (703) 308-6918.



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